

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED PRODUCTS CORPORATION	:	CIVIL ACTION
	:	
v.	:	
	:	
	:	
EDA INC., ICF KAISER INTERNATIONAL,	:	No. 97-3905
INC., ICF KAISER ENGINEERS GROUP	:	
INC.	:	

**O R D E R - M E M O R A N D U M**

AND NOW, this 15th day of May, 1998, upon hearing held April 20, 1998 and May 12, 1998, the following findings are entered:

1. Under Fed.R.Civ.P. 26(c)(7), both parties are entitled to obtain protective orders covering their discovery production of "a trade secret or other confidential research, development or commercial information" upon the showing of "good cause."

2. A prerequisite of Fed.R.Civ.P. 26(c)(7) is that counsel make a "good faith ... effort to resolve the dispute without court action."

3. Plaintiff United Products Corporation has a "good cause" interest and concern in maintaining the confidentiality of some if not all of the documents related to the Consulting Agreement between the parties dated February 14, 1996 and Purchase Order No. 143 dated February 27, 1995 (sic) and Purchase Order No. 143-A dated March 25, 1996.

4. Defendants EDA Incorporated, ICF Kaiser International, Inc., and ICF Kaiser Engineers Group, Inc. have a valid concern in the specificity and clarity of the protective order given the nature of the industry, the dealings between the parties, and the history of plaintiff's litigation to enforce confidentiality agreements with others.

5. There appears to be a material issue as to the ownership, as between the parties, of certain documents prepared pursuant to the Consulting Agreement and Purchase Orders.

6. The principles of Pansy v. Borough of Stroudsburg, 23 F.3d 772 (3d Cir. 1994) apply to the present confidentiality protection issues.

7. The order of May 8, 1998 is incorporated by reference. Counsel do not appear to have attempted to comply with the terms of that order but instead have taken positions that have resulted in further unnecessary delay and needless increase in cost of litigation. See Fed.R.Civ.P. 11(c).

It is ordered:

1. By May 22, 1998 plaintiff will submit a list, by reference number, of each document for which it requests a protective order, together with a statement of good cause under Fed.R.Civ.P. 26(c)(7) as delineated by Pansy. The list may group documents provided that specific numbers or other identification is given.

2. By May 22, 1998 a joint statement of positions, signed by each party, shall be submitted in regard to the issue of document ownership and its effect, if any, on confidentiality. In addition, each party's position shall be set forth as to the scope and effect of the contractual confidentiality provision relative to the Consulting Agreement and the Purchase Orders. Furthermore, there shall be included a certification signed by counsel for each party that a good faith effort has been made by him to "resolve the dispute without court action." Fed.R.Civ.P. 26(c)(7).

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Edmund V. Ludwig, J.